

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s):	Timothy K. Searfoss		
Title:	Trailer Cover System		
App. No.:	10/664,806	Filed:	09/17/2003
Examiner:	GUTMAN, Hilary	Group Art Unit:	3612
Att. Dkt. No.:	3000-0022 (3000/22)	Confirmation No.:	3469

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REPLY BRIEF IN SUPPORT OF APPEAL

Appellant demonstrated in his opening brief that both references relied on by the Examiner describe structure mounted on the side, not the top, of a wall. Swanson et al. '856 describes the ledge 46 as attached on the side 15 near edge 19. Schmeichel '512 describes the hooks 40 as secured to the side wall 22 below the top edge thereof. The Examiner ignores these explicit teachings, and instead relies for the first time on a dictionary definition.

The Examiner did not supply a copy of this definition with the Answer. However, Merriam & Webster's Online dictionary gives its first definition of top as "the highest point, level, or part of something: SUMMIT, CROWN." Appendix D. Neither the ledge 46 of Swanson et al. '856, nor the hooks 40 of Schmeichel '512, are at the highest point, level, part, summit or crown of their respective walls.

The Examiner is apparently replying on Merriam & Webster's second definition. That definition reads (the Examiner has cited only a portion) "the highest or uppermost region or part; the upper end, edge, or surface." Appendix D. Neither the ledge 46 nor the hooks 40 are at the highest or uppermost region or part of the wall – in both cases, there is clearly a gap between the structure and the top of the wall. Something cannot be "highest or uppermost" if one can go higher or farther up. For the same reason, neither the ledge 46 nor the hooks 40 can be said to lie at their respective upper ends, edges, or surfaces.

The Examiner's reliance on a definition of "top" as an adjective is entirely misplaced. The word "top" is used only as a noun in the claims.

The Specification and the dictionary establish that the references do not anticipate or make obvious the claims of this application. The final rejection should therefore be reversed.

Respectfully submitted,

02 June 2008

Date

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